

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT.

THE UNITED STATES OF AMERICA,

Plaintiff in Error,

vs.

INMAN-POULSEN LUMBER COMPANY,

a corporation,

Defendant in Error.

Transcript of Record on Writ of Error

In Error to the District Court of the United States
for the District of Oregon.

Filed

NOV 26 1915

F. D. Monckton,
Clerk

No. _____

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*IN THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH
CIRCUIT.*

THE UNITED STATES OF AMERICA,

Plaintiff in Error,

vs.

INMAN-POULSEN LUMBER COPANY,

Defendant in Error.

NAMES AND ADDRESSES OF THE
ATTORNEYS OF RECORD:

Mr. Clarence L. Reames, United States Attorney, and
Mr. John J. Beckman, Assistant United States
Attorney, Postoffice Building, Portland, Oregon,
for the Plaintiff in Error.

Cake & Cake, Chamber of Commerce Building, Port-
land, Oregon, for the Defendant in Error.

CITATION ON WRIT OF ERROR.

United States of America,
District of Oregon—ss.

To Inman-Poulsen Lumber Company, a Corporation, and Messrs. Cake and Cake, its Attorneys, greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the District of Oregon, wherein the United States of America is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 31st day of August, in the year of our Lord, one thousand, nine hundred and fifteen.

R. S. BEAN,
Judge.

United States of America,
District of Oregon—ss.

Service of the foregoing citation on writ of error, by receipt of a copy thereof duly certified by John J. Beck-

man, of Attorneys for the above entitled plaintiff, together with a like certified copy of petition for writ of error, order allowing writ of error, assignment of errors, and writ of error, is hereby admitted at Portland, Oregon, this first day of September, 1915.

CAKE & CAKE,
of Attorneys for Defendant in Error.

Filed September 1, 1915. G. H. Marsh, Clerk.

*In the United States Circuit Court of Appeals for the
Ninth District.*

WRIT OF ERROR.

The United States of America,

Plaintiff in Error.

vs.

Inman-Poulsen Lumber Company,

a corporation,

Defendant in Error.

The United States of America, ss.

The President of the United States of America.
To the Judge of the District Court of the United States
for the District of Oregon:

Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the District Court before the Honorable Robert S. Bean, one

of you, between the United States of America, Plaintiff and Plaintiff in Error, and Inman-Poulsen Lumber Company, a corporation, Defendant and Defendant in Error, a manifest error hath happened to the great damage of the said Plaintiff in Error, as by complaint doth appear; and we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, and, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

Witness the Honorable Edward Douglas White, Chief Justice of the Supreme Court of the United States this 31st day of August, 1915.

G. H. MARSH,

Clerk of the District Court of the United States for the District of Oregon.

(Seal)

By.....Deputy.

Filed August 31, 1915. G. H. Marsh, Clerk, United States District Court, District of Oregon.

In the District Court of the United States for the District of Oregon.

November Term, 1913.

Be it remembered, that on the 8th day of November, 1913, there was duly filed in the District Court of the United States for the District of Oregon, a Complaint, in words and figures as follows, to-wit:

COMPLAINT.

In the District Court of the United States for the District of Oregon.

COMPLAINT.

United States of America,

Plaintiff,

vs.

Inman-Poulsen Lumber Company,
a corporation,

Defendant.

Comes now the United States of America, by Jesse L. Sumrall, Assistant United States Attorney for the District of Oregon, by direction of the Attorney General of the United States, and for cause of complaint against the defendant, alleges:

I.

That at all the times hereinafter mentioned, the defendant, Inman-Poulsen Lumber Company, was and

now is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon, having its principal place of business at Portland, Multnomah County, State of Oregon.

II.

That at all the times hereinafter mentioned, the Southeast Quarter ($SE\frac{1}{4}$) of Section Twenty-one (21), Township Four (4) North, Range Two (2) East Willamette Meridian, was and is now public land of the United States.

III.

That by virtue of an Act of Congress approved July 2, 1864, (13 Stats. L. 365, 367), incorporating the Northern Pacific Railroad Company and granting to it certain lands to aid in the construction of its road, the above described Southeast Quarter ($SE\frac{1}{4}$) of Section Twenty-one (21), Township Four (4) North, Range Two (2) East Willamette Meridian, became vested in the Northern Pacific Railroad Company by reason of the definite location of said line of railroad opposite said land, on September 22, 1882, and by List No. 19, dated October 24, 1888, a patent issued May 24, 1895, by the United States.

That by the terms of an Act of Congress dated July 1, 1898, (30 Stats. L. 597, 620), the provision was made that certain lands within the grant to said railroad which had been disposed of by the United States or were occu-

pied and claimed as provided in said act, prior to January 1, 1898, might be relinquished by said railroad company to the United States and other lands taken in lieu thereof, and in accordance with the terms of said act, the said railroad company did relinquish to the United States said Southeast Quarter ($SE\frac{1}{4}$) of Section Twenty-one (21), Township Four (4) North, Range Two (2) East Willamette Meridian, said lands having been first listed for relinquishment by the Secretary of the Interior under date of May 2, 1905, by List No. 71, quit-claim deed being given by the railroad company under date of August 5, 1907, which deed was accepted by the United States under date of January 3, 1908.

That by said Act of Congress of July 1, 1898, it is expressly provided that:

“And all right, title and interest of the said railroad grantee, or its successors in interest, in and to any of such tracts which the said railroad grantee, or its successors in interest, may relinquish hereunder, shall revert to the United States, and such tract shall be treated under the laws thereof in the same manner as if no right thereto had ever vested in the said railroad grantee.”

That by reason thereof the said Southeast Quarter ($SE\frac{1}{4}$) of Section Twenty-one (21), Township Four (4) North, Range Two (2) East Willamette Meridian, was public land of the United States for all intents and purposes herein set forth.

IV.

That under date of January 3, 1908, the homestead application No. 14387 of William N. Stanley, was al-

lowed for said Southeast Quarter ($SE\frac{1}{4}$) of Section Twenty-one (21), Township Four (4) North, Range Two (2) East Willamette Meridian, by virtue of his claim of settlement on said land prior to January 1, 1898, and on April 6, 1908, said William N. Stanley relinquished said homestead entry to the United States.

That during the period in which said William N. Stanley claimed to occupy said land as an actual bona fide settler, to-wit, during the years 1900, 1901, 1902 and 1903, the said William N. Stanley, together with one George Charley, an Indian, Joe Wilmot and R. A. McLary, as hereinafter more fully set forth, did wrongfully and unlawfully cut and remove from said homestead and settlement claim, large quantities of timber for sale and speculation and not in the course of clearing and improving said land, and said land from which said timber was cut has never been cleared, cultivated or improved and was not intended to be cleared, cultivated or improved by the said William N. Stanley.

V.

That in the Fall of the year 1901 and in the Spring of the year 1902, the said William N. Stanley and George Charley and Joe Wilmot, well knowing that said above described land was public land of the United States, wrongfully and unlawfully cut and removed from said land, 100,000 feet of red fir timber then standing and growing thereon, and placed the same in Lewis River in the state of Washington at what is known as the forks of said river; that upon placing said timber in

said river, the said William N. Stanley, George Charley and Joe Wilmot thereupon formed the same into rafts in said river and when said logs were so placed in said rafts in said river as aforesaid, they were of the reasonable value of five dollars per thousand feet, and thereupon during the Spring of 1902, the said William N. Stanley, George Charley and Joe Wilmot wrongfully and unlawfully sold said timber in the rafts, to the defendant Inman-Poulsen Lumber Company, and thereafter delivered the same to the said Inman-Poulsen Lumber Company in said rafts at the forks of said river, to the amount of 100,000 feet of red fir timber.

That in the Fall of the year 1902 and in the Spring of the year 1903, the said William N. Stanley and Robert McLary, the latter now deceased, well knowing the said above described land was public land of the United States, wrongfully and unlawfully cut and removed from said land, 1,000,000 feet of red fir timber then standing and growing thereon, and placed the same in Lewis River in the state of Washington at what is known as the forks of said river; that upon placing said lumber in said river, said William N. Stanley and Robert McLary thereupon formed the same into rafts in the said river, and when said logs were so placed in said rafts in said river as aforesaid, they were of the reasonable value of five dollars per thousand feet; that thereupon during the Spring of 1903, the said William N. Stanley and Robert McLary wrongfully and unlawfully sold the said timber in said rafts to the said defendant, Inman-Poulsen Lumber Company, and thereafter deliv-

ered the same to the Inman-Poulsen Lumber Company in the said rafts at the forks of said Lewis River, to the amount of one million feet of red fir timber.

That by reason of the foregoing facts, the said plaintiff was and is damaged in the sum of Five Thousand, Five Hundred (\$5,500.00) Dollars.

VI.

That prior to the commencement of this action, the said plaintiff demanded of the said defendant, Inman-Poulsen Lumber Company, payment for said lumber, but said defendant refused to pay the same or any part thereof and does now refuse to pay for same.

Wherefore plaintiff demands judgment against the said defendant, Inman-Poulsen Lumber Company, in the sum of Five Thousand Five Hundred (\$5,500.00) Dollars, together with interest thereon at the rate of six per cent (6%) per annum from the 25th day of February, 1913, the date upon which demand was first made upon said defendant for payment of said sum and for plaintiff's costs and disbursements of this action.

Dated at Portland, Oregon, this 8th day of November, 1913.

JESSE L. SUMRALL,
Assistant United States Attorney for the District of
Oregon.

United States of America,
District and State of Oregon—ss.

I, Jesse L. Sumrall, being first duly sworn depose and say that I am the Assistant United States Attorney for the District of Oregon heretofore mentioned; that the facts set forth in the foregoing complaint are true as I verily believe and that I base this affidavit of verification upon reports and affidavits in my possession transmitted to me by the Department of Justice of the United States of America.

(Sgd) JESSE L. SUMRALL.

Subscribed and sworn to before me this 8th day of November, 1913.

(Seal) HENRY McCONNELL,
Notary Public for Oregon.

Filed November 8, 1913. A. M. Cannon, Clerk.

And afterwards, to wit, on the 22nd day of November, 1913, there was duly filed in said Court and cause, a Demurrer to the complaint in words and figures as follows, to wit:

DEMURRER.

Comes now the defendant above named and demurs to the complaint filed herein upon the following grounds:

1. That said complaint does not state facts sufficient to constitute a cause of action on the part of the plaintiff against the defendant.

2. That it appears upon the face of said complaint that the timber therein alleged to have been purchased by this defendant in the years 1900, 1901, 1902, and 1903, was not cut or removed from the public lands of the United States, or from any land of the United States, and was not the property of the United States.

(Signed) CAKE & CAKE,
Attorneys for Defendant.

District of Oregon,
County of Multnomah—ss.

I, W. M. Cake, one of counsel for defendant herein, hereby certify that the foregoing demurrer to plaintiff's complaint is in my opinion well founded in point of law.

(Sgd.) W. M. Cake,
One of Counsel for Defendant.

District of Oregon,
County of Multnomah—ss.

I, G. W. Thatcher, being first duly sworn, depose and say that I am the Vice President of the Inman, Poulsen Lumber Company, a corporation, defendant herein, and that the demurrer of the defendant to the complaint of the plaintiff is not interposed for delay.

(Sgd.) G. W. Thatcher.

Subscribed and sworn to before me this 22nd day of November, 1913.

(Sgd.) John T. McKee,
Notary Public for Oregon.

(Seal)

Service by copy admitted this 22nd day of November, 1913.

(Sgd.) Jesse L. Sumrall,
Attorney for Plaintiff.

Filed November 22, 1913, A. M. Cannon, Clerk.

And afterwards, to-wit, on Monday, the 23rd day of February, 1914, the same being the 94th judicial day of the regular November, 1914, term of said Court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

ORDER SUSTAINING DEMURRER.

This cause was heard on the demurrer of the defendant to the complaint herein and was argued by Mr. John D. Beckman, Assistant United States Attorney and by Mr. W. M. Cake, of counsel for said defendant; on consideration whereof, it is ordered and adjudged that said demurrer be and the same is hereby sustained.

And afterwards, to-wit, on the 23rd day of February, 1914, there was duly filed in said Court, and cause, an Opinion of the Demurrer to the Complaint, in words and figures as follows, to-wit:

OPINION.

John J. Beckman, Assistant U. S. Attorney for Plaintiff.

Judge W. M. Cake for Defendant.

Memorandum by

BEAN, District Judge, on Demurrer to Complaint.

The action is to recover the value of timber cut and removed from 160 acres of land by one Stanley, and purchased by the defendant. The land from which the timber was removed is within the limits of the grant by Congress to the Northern Pacific Railroad Company, of July 2, 1864, (13 Sts. at Large 365), to aid in the construction of its road, and was duly patented to the company on May 24, 1895. On May 2, 1905, it was listed by the Secretary of the Interior for relinquishment to the Government, under the act of July 1, 1898, (30 Stat. at Large 620), which provides that where certain lands within the grant have been disposed of by the United States or settled upon or claimed in good faith by any qualified settler prior to January 1, 1898, under color of title or claim of right under some law of the United States or ruling of the Interior Department, and the settler or purchaser refuses to transfer his entry as therein provided, the railroad grantee or its successor may upon a proper relinquishment of such land select an equal quantity of public land in lieu thereof. The land was actually conveyed to the United States by the Railroad Company on January 3, 1908. On the same day Stanley's application for a homestead entry thereon was allowed, in which he claimed settlement prior to January 1, 1898, but such entry was relinquished in April following. During the years 1900 to 1903, prior to the allowance of his homestead application, and while the

title to the land was in the Railroad Company, Stanley cut and removed a large quantity of timber therefrom, and sold the same to the defendant.

The plaintiff brings this action to recover the value of such timber, claiming that the effect of the relinquishment of the land to the Government by the Railroad Company, after the timber had been cut and removed, is to vest in the Government a right of action therefor. There is no averment that the timber was cut and removed without the knowledge or consent of the Railroad Company, or that the land from which it was cut had been disposed of by the United States to any one other than the Railroad Company, prior to January 1, 1898, or had been settled upon or claimed in good faith prior to that date by any qualified settler under any law of the United States or ruling of the Interior Department. The defendant has demurred to the complaint, and in my judgment it should be sustained.

The action is essentially in trover, and to entitle the plaintiff to recover it is necessary for it to show a general or special property in the timber cut and a right to the possession of the same at the commencement of the action. 38 Cyc. 1004 et seq. *United States v. Loughrey*, 172 U. S. 206. And this it does not do. On the contrary, it appears from the complaint that the title to the land, and consequently to the timber growing thereon, was in the Railroad Company at the time the timber was cut and removed, and presumably the land was in the possession of the company through some one holding under it. After the timber had been cut and

removed the land was relinquished to the plaintiff, as provided in the Act of July 1, 1898, but I can find nothing in such act which vests or is intended to vest in the Government a right of action for timber cut and removed prior to such relinquishment. The provision that all right, title and interest of the Railroad Company or its grantees in land relinquished "shall revert to the United States, and such tracts shall be treated, under the laws thereof, in the same manner as if no rights thereto had ever vested in the said railroad grantee," has reference to the title and the treatment thereof after the relinquishment, and does not vest the Government with the title to the land or the timber growing thereon, or the right to possession thereof, prior to relinquishment, or with any right of action the Railroad Company may have had for the timber. The act provides when and under what circumstances the Railroad Company or its grantee might make a relinquishment, but an actual relinquishment was necessary to vest title in the Government. Until the land was actually relinquished, the legal title, with the ownership of the timber growing thereon, was in the Railroad Company, and the United States could not have maintained an action for trespass against one going thereon and cutting and removing the timber therefrom. *United States v. Loughrey*, 172 U. S. 206. The case of *Humbird v. Avery*, 195 U. S. 506, was a controversy between purchasers from the Railroad Company and parties claiming under color of title under some law of the United States or ruling of the Interior Department, and involved a question of title only, and not the right acquired by the United States by a relinquishment regularly made.

As the Government had no title to the land or timber at the time the timber was cut and removed or the action commenced, it cannot, in my judgment, maintain an action to recover the value thereof.

Filed February 23, 1914, A. M. Cannon, Clerk.

And afterwards, to-wit, on the 24th day of September, 1914, there was duly filed in said Court and cause, a Second Amended Complaint in words and figures as follows, to-wit:

SECOND AMENDED COMPLAINT.

Comes now the United States of America, by John J. Beckman, Assistant United States Attorney for the District of Oregon, under and by the authority and direction of the Attorney General of the United States, and having first obtained leave of Court, files this its second amended complaint and for cause of action against the defendant herein complains and alleges:

I.

That at all the times hereinafter mentioned, the defendant, Inman-Poulsen Lumber Company, was and now is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon, having its principal place of business at Portland, Multnomah County, State of Oregon.

II.

That at all the times hereinafter mentioned, the Southeast Quarter ($SE\frac{1}{4}$) of Section Twenty-one (21), Township Four (4) North, Range Two (2) East, of the Willamette Meridian, was and now is public land of the United States of America.

III.

That by virtue of an Act of Congress approved July 2, 1864 (13 Stats. L. 365, 367), incorporating the Northern Pacific Railroad Company and granting to it certain lands to aid in the construction of its road, the above described Southeast Quarter ($SE\frac{1}{4}$) of Section Twenty-one (21), Township Four (4) North, Range Two (2) East, Willamette Meridian, became vested in the Northern Pacific Railroad Company by reason of the definite location of said line of railroad opposite said land, on September 22, 1882, and that by List No. 19, dated October 24, 1888, a patent issued to the said Northern Pacific Railroad Company on May 24, 1895, by the United States.

That by the terms of an Act of Congress dated July 1, 1898, (30 Stats. L. 597, 620), a provision was made by which certain lands within the grant to said railroad company, above mentioned, which had been disposed of by the United States or were occupied and claimed as provided in said Act prior to January 1, 1898, might be relinquished by said railroad company to the United States and other lands taken in lieu there-

of, and in accordance with the terms of said Act of July 1, 1898, the said railroad company did relinquish to the United States the said Southeast Quarter ($SE\frac{1}{4}$) of Section Twenty-one (21), Township Four (4) North, Range Two (2) East Willamette Meridian, said lands having been first listed for relinquishment by the Secretary of Interior of the United States under date of May 2, 1905, by List No. 71, and that a quit-claim deed was given by the said railroad company to the said lands herein described, on or about the 5th day of August, 1907, which said deed was accepted by the United States on or about the 3rd day of January, 1908.

That by the said Act of Congress of July 1, 1898, aforesaid, it was therein expressly provided that:

“And all right, title and interest of the said railroad grantee, or its successors in interest, in and to any of such tracts which the said railroad grantee, or its successors in interest, may relinquish hereunder, shall revert to the United States, and such tract shall be treated under the laws thereof in the same manner as if no right thereto had ever vested in the said railroad grantee.”

That by reason of the premises aforesaid, the said Southeast Quarter ($SE\frac{1}{4}$) of Section Twenty-one (21), Township Four (4) North, Range Two (2) East, Willamette Meridian, at all times from and after the 1st day of July, 1898, was and now is public land of the United States for all the intents and purposes herein set forth.

IV.

That on to-wit: January 28, 1908, the homestead application No. 14387 of William N. Stanley was allowed by the officers of the General Land Office of the United States for the said Southeast Quarter ($SE\frac{1}{4}$) of Section Twenty-one (21), Township Four (4) North, Range Two (2) East, Willamette Meridian, by virtue of the claim of settlement of the said William N. Stanley on said lands as an actual bona fide settler, prior to January 1, 1898, to-wit: in, from and after the year 1891; that in further support of said homestead application No. 14387 the said William N. Stanley submitted proof to the said officers of the said General Land Office that he had made and filed a homestead application for the said land on or about December 30, 1896, in which said application he alleged settlement and residence on said land in and since the year 1891; that on, to-wit: the 6th day of April, 1908, the said William N. Stanley relinquished the said homestead entry No. 14387 to the United States.

That during the period in which said William N. Stanley claimed to occupy said land as an actual bona fide settler, to-wit: during the year 1900, 1901, 1902 and 1903, the said William N. Stanley, together with one George Charlie, an Indian, Joe Wilmot and R. A. McLary, as hereinafter more fully set forth in paragraph V of this second amended complaint, did wrongfully and unlawfully cut and remove from said homestead and settlement claim large quantities of timber for sale and speculation and not in the course of clear-

ing and improving said land, and said land from which said timber was so cut and removed as aforesaid has never been cleared, cultivated or improved and was not intended to be cleared, cultivated or improved by the said William N. Stanley.

V.

That in the fall of the year 1901 and in the spring of the year 1902, the said William N. Stanley and George Charlie and Joe Wilmot, well knowing that said above described land was public land of the United States, did wrongfully and unlawfully cut and remove from said land, hereinabove fully described, 100,000 feet of red fir timber then standing and growing thereon and placed the same in the Lewis River in the State of Washington at what is known as the forks of said river; that upon placing said timber in said river, the said William N. Stanley, George Charlie and Joe Wilmot thereupon formed the same into rafts in said river; that when said logs were so placed in said rafts in said river as aforesaid, they were of the reasonable value of five dollars per thousand feet; that thereupon during the spring of the year 1902, the said William N. Stanley, George Charlie and Joe Wilmot wrongfully and unlawfully sold said timber in the said rafts, as aforesaid, to the defendant Inman-Poulsen Lumber Company, and thereafter delivered the same to the said Inman-Poulsen Lumber Company in said rafts in the forks of said river to the amount of 100,000 feet of red fir timber.

That in the fall of the year 1902 and in the spring of the year 1903, the said William N. Stanley and R. A. McLary, the latter now deceased, well knowing the said above described land was public land of the United States, did wrongfully and unlawfully cut and remove from said land 1,000,000 feet of red fir timber then and there standing and growing thereon, and place the same in Lewis river in the state of Washington at what is known as the forks of said river; that upon placing said lumber in said river, said William N. Stanley and R. A. McLary thereupon formed the same into rafts in the said river; that when the said lumber was so placed in said rafts in said river as aforesaid it was of the reasonable value of five dollars per thousand feet; that thereupon during the spring of the year 1903, the said William N. Stanley and R. A. McLary wrongfully and unlawfully sold the said lumber in the said rafts to the said defendant Inman-Poulsen Lumber Company, and thereafter delivered the same to the said Inman-Poulsen Lumber Company in the said rafts at the forks of said Lewis River to the amount of one million feet of red fir timber.

That the said timber so cut, removed and sold as aforesaid, by the said William N. Stanley, George Charlie, Joe Wilmot and R. A. McLary, aforesaid, at and during the time aforesaid, was so cut, removed and sold without the knowledge, consent or permission of the said Northern Pacific Railroad Company, or its successors or assigns in interest, and without the knowledge, consent or permission of the United States of America.

VI.

That by reason of the foregoing facts the United States of America, plaintiff herein, was and is damaged in the sum of Five Thousand and Five Hundred (\$5,500.00) Dollars.

VII.

That prior to the commencement of this action, on to wit: the 25th day of February, 1913, this plaintiff demanded of the said defendant Inman-Poulsen Lumber Company payment for said lumber but said defendant refused to pay for the same or any part thereof and does now refuse to pay for the same.

WHEREFORE, plaintiff demands judgment against the said defendant Inman-Poulsen Lumber Company in the sum of Five Thousand Five Hundred (\$5,500.00) Dollars, together with interest thereon at the rate of six per cent (6%) per annum from the 25th day of February, 1913, and for costs and disbursements in this action incurred.

JOHN J. BECKMAN,
Assistant United States Attorney for the District of
Oregon.

United States of America,
State and District of Oregon,
County of Multnomah—ss.

I, John J. Beckman, being first duly sworn depose and say that I am the Assistant United States Attor-

ney heretofore mentioned; that the facts set forth in the foregoing second amended complaint are true as I verily believe, and that I base this affidavit of verification upon reports and affidavits in my possession transmitted to me by the Department of Justice of the United States.

JOHN J. BECKMAN.

Subscribed and sworn to before me this 23rd day of September, 1914.

(Seal)

HENRY McCONNELL,
Notary Public for Oregon.

Due and legal service of the within second amended complaint by delivery of a duly certified copy thereof, is hereby acknowledged this 24th day of September, 1914, at Portland, Oregon.

Cake & Cake,
Attorneys for Defendant.

Filed September 24, 1914. G. H. Marsh, Clerk.

And afterwards, to-wit, on the 21st day of January, 1915, there was duly filed in said Court and cause, a Demurrer to the Second Amended Complaint, in words and figures as follows, to-wit:

DEMURRER TO SECOND AMENDED
COMPLAINT.

Comes now the defendant above named and demurs to the second amended complaint filed herein for the

reason and upon the ground that said complaint does not state facts sufficient to constitute a cause of action against the defendant herein.

(Sgd) Cake & Cake,
Attorneys for Defendant.

I hereby certify that the foregoing demurrer is in my opinion well founded in point of law.

(Sgd) W. M. Cake,
of Attorneys for Defendant.

Service by copy admitted this 21st day of January, 1915.

(Sgd) John J. Beckman,
Attorneys for Plaintiff.

Filed January 21, 1915, G. H. Marsh, Clerk.

And afterwards, on Monday, the 22nd day of February, 1915, the same being the 97th judicial day of the regular November term of said Court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

ORDER SUSTAINING DEMURRER TO SECOND AMENDED COMPLAINT.

This cause was heard upon the demurrer to the second amended complaint here, and was argued by Mr. John J. Beckman, Assistant United States Attorney, and by Mr. John McKee, of counsel for defendant. On consideration whereof, it is ordered and adjudged that said demurrer be, and the same is hereby sustained.

And afterwards, to-wit, on the 22nd day of February, 1915, there was duly filed in said Court and cause, an Opinion on the Demurrer to the Second Amended Complaint, in words and figures as follows, to-wit:

OPINION.

Portland, Oregon, February 22, 1915, 10 a. m.

R. S. Bean, District Judge: (ORAL)

The case of the United States vs. Inman-Poulsen Lumber Company is an action to recover the value of certain timber that was cut from the land described in the complaint while the title thereto was in the Northern

Pacific Railroad Company and before it had surrendered or conveyed the land to the government. A demurrer was sustained to the original complaint and an amended complaint has been substituted the same as the original except that it alleges certain facts which, if true, show that the relinquishment of the Northern Pacific Railroad Company was in pursuance and accordance with the terms of an act of congress of July 1, 1898, but it does not change the substantive cause of action nor the ground upon which the demurrer to the original complaint was sustained, which was that at the time the timber was cut the government of the United States had no interest in the matter. The title was in the Northern Pacific Railroad Company and there is no averment that the cause of action, if there ever was one, had been transferred to the government, so the demurrer will be sustained.

Filed February 22, 1915, G. H. Marsh, Clerk.

And afterwards, to-wit, on the 15th day of March, 1915, there was duly filed in said Court and cause, the election of plaintiff to stand on the Second Amended Complaint in words and figures as follows, to-wit:

ELECTION TO STAND ON AMENDED COMPLAINT.

Comes now the plaintiff, United States of America, by John J. Beckman, Assistant United States Attorney for Oregon, and attorney for the plaintiff above named,

and represent to the court that the plaintiff is unable to further amend its second amended complaint heretofore filed in the above entitled cause and by this Honorable Court, on the 22nd day of February, 1915, held insufficient upon demurrer by plaintiff and by reason thereof the plaintiff hereby elects to stand upon its second amended complaint heretofore filed, as aforesaid.

Dated at Portland, Oregon, this 15th day of March, 1915.

John J. Beckman,
Attorney for Plaintiff.

Filed March 15, 1915, G. H. Marsh, Clerk.

And afterwards, to-wit, on Monday, the 15th day of March, 1915, the same being the 13th judicial day of the regular March term of said Court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

JUDGMENT.

Now, at this day, come the plaintiff by Mr. Everett A. Johnson, Assistant United States Attorney, and the defendant by Mr. John McKee, of counsel, whereupon said defendant moves the Court for a judgment upon the pleadings herein, dismissing the complaint of said plaintiff, and it appearing to the Court that the demurrer of the said defendant to the second amended complaint has heretofore been sustained by the Court, and

that said plaintiff has filed a notice that it elects to stand upon said amended complaint and will not further amend the pleading, it is hereby considered that said plaintiff take nothing by this action, and that said defendant go hence without day, and that the complaint in this cause be and it is hereby dismissed.

And afterwards, to-wit, on the 31st day of August, 1915, there was duly filed in said Court and cause, a Petition for Writ of Error, in words and figures as follows, to-wit:

PETITION FOR WRIT OF ERROR.

Comes now plaintiff, United States of America, by John J. Beckman, Assistant United States Attorney, under and by authority and direction of the Attorney General of the United States, and says that on or about the 15th day of March, 1915, this court entered judgment herein in favor of the defendant and against this plaintiff, in which judgment and proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which this plaintiff filed with this petition.

Wherefore, this plaintiff prays that a Writ of Error may be issued in this behalf out of the United States Circuit Court of Appeals for the Ninth Circuit for the correction of errors so complained of and that a transcript of the record, proceedings and papers in this

cause duly authenticated may be sent to said Circuit Court of Appeals for said circuit.

John J. Beckman,
Attorney for Plaintiff.

Filed August 31, 1915. G. H. Marsh, Clerk.

And afterwards, to-wit, on the 31st day of August, 1915, there was duly filed in said Court and cause, an Assignment of Errors, in words and figures as follows, to-wit:

ASSIGNMENT OF ERRORS.

The United States of America, plaintiff in this action, in connection with and as a part of its Petition for a Writ of Error filed herein, makes the following assignment of errors, which it avers were committed by the court in the rendition of the judgment against this plaintiff appearing on the record herein, that is to say:

I.

That the court erred in holding and deciding that the second amended complaint of this plaintiff herein filed did not state facts sufficient to constitute a cause of action against the defendant.

II.

That the court erred in sustaining the demurrer to the defendant, herein filed, to the second amended complaint of the plaintiff.

III.

That the court erred in rendering judgment against this plaintiff upon the sustaining of the demurrer of the defendant.

IV.

That the court erred in not holding and deciding that the second amended complaint of the plaintiff herein filed stated a cause of action against the defendant.

V.

That the court erred in not overruling the demurrer of the defendant to the second amended complaint filed by the plaintiff in this cause.

Wherefore this plaintiff prays that the said judgment be reversed.

John J. Beckman.
Attorney for Plaintiff.

Filed August 31, 1915. G. H. Marsh, Clerk.

And afterwards, to-wit, on Tuesday, the 31st day of August, 1915, the same being the 50th judicial day of the regular July term of said Court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

ORDER ALLOWING WRIT OF ERROR.

On this 31st day of August, 1915, the above named plaintiff appearing by John J. Beckman, Assistant United States Attorney, and filing herein and presenting to the court its Petition praying for the allowance of a Writ of Error and Assignment of Errors intended to be urged by it, and praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered duly authenticated be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had as may be proper in the premises;

Now, on consideration thereof the court does allow the Writ of Error as prayed in the Petition of plaintiff without bond of the plaintiff, it appearing that the above entitled cause is one in which the United States of America is appellant, and is brought under and by direction of the Attorney General of the United States.

R. S. BEAN,
Judge of the District Court.

Dated this 31st day of August, A. D. 1915.

Filed August 31, 1915. G. H. Marsh, Clerk.

CLERK'S CERTIFICATE TO TRANSCRIPT.

United States of America,
District of Oregon—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that I have prepared the foregoing transcript of record in the case in said court in which the United States of America is plaintiff and plaintiff in error and the Inman Polsen Lumber Company, a corporation, is defendant and defendant in error, in accordance with the law and the rules of this court, and the *praecepe* filed by the United States Attorney in said case, and that the said transcript is a true and correct transcript of the record and proceedings had in said court, in accordance with the said *praecepe*, as the same appear of record and on file at my office and in my custody, and

I further certify that the cost of the foregoing transcript is \$ for the fees of the clerk in preparing said transcript, and that the same has been charged in my account against the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Portland in said District this day of November, A. D. 1915.

Clerk.